

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION**

Christopher Seaman, et al.,

Plaintiffs,

v.

The Commonwealth of Virginia, et al.,

Defendants.

Case No. 3:22-cv-00006-NKM

**JOINT MOTION TO DISMISS AND RETAIN JURISDICTION**

Christopher Seaman and Elizabeth Allison Lyons, individually and on behalf of C.S., a minor; Tasha Nelson, individually and on behalf of J.N., a minor; Elizabeth Burnett., individually and on behalf of B.B., a minor; Lindsey Dougherty, individually and on behalf of G.D., a minor; Meghan Dufrain and Roch Dufrain, individually and on behalf of J.D., a minor; Denille Francis, individually and on behalf of Q.O., a minor; Brian Mulligan and Lori Dooley, individually and on behalf of R.M., a minor; Kimberly Crawley, individually and on behalf of I.C., a minor; L. W., individually and on behalf of C.B., a minor; K.R., individually and on behalf of L.R., a minor; S.K., individually and on behalf of M.K., a minor; and R.M., individually and on behalf of J.M., a minor, (together, the “Plaintiffs”), and the Commonwealth of Virginia, Glenn Youngkin, in his official capacity as Governor of the Commonwealth of Virginia, Jason Miyares, in his official capacity as Attorney General of the Commonwealth of Virginia, Jillian Balow, in her official capacity as Virginia Superintendent of Public Instruction, and Colin Greene, in his official capacity as Virginia Health Commissioner (together,

“Defendants”) (collectively the “Parties”), having entered into a Settlement Agreement (“Agreement”), hereby jointly move this Court for entry of an order conditionally dismissing this action, with prejudice, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, and retaining jurisdiction to enforce certain aspects of the Agreement in accordance with its terms.

In support thereof, the Parties state as follows:

1. The Parties participated in a settlement conference conducted by Judge Joel C. Hoppe on August 5, 2022. As a result of ongoing negotiations since that date, the Parties have agreed to resolve the Plaintiffs’ claims in the above-titled action challenging Executive Order No. 2 and S.B. 739 under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*, and the American Rescue Plan Act of 2021, regarding peer masking in public schools as a reasonable modification for students with disabilities that put them at high risk of severe illness from COVID-19.
2. Under the Agreement, the Parties agreed to full settlement of all issues in this case and agreed to move this Court to dismiss this action and to retain jurisdiction for the limited purpose of enforcing the terms of the Agreement only with respect to any disputes arising thereunder as to Defendants’ enforcement of E.O. 2 or S.B. 739 against Plaintiffs’ schools or school divisions with regard to peer masking as a reasonable modification for the individual Plaintiffs in their schools. The Agreement is attached as Exhibit A.
3. The Parties hereby jointly move this Court to dismiss this action with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) conditioned on the Court’s retention of jurisdiction to enforce the Agreement with respect to any disputes arising thereunder as to Defendants’ enforcement of E.O. 2 or S.B. 739 with regard to peer masking as a

reasonable modification for the individual Plaintiffs in their schools. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994) (recognizing that a federal district court may retain jurisdiction to enforce a “dismissal-producing settlement agreement” in its order); *Columbus-American Discovery Group v. Atlantic Mut. Ins. Co.*, 203 F.3d 291, 299 (4<sup>th</sup> Cir. 2000) (finding that dismissal order stating that “[t]he Court retains jurisdiction to enforce the settlement of the parties” granted the district court jurisdiction to enforce a settlement agreement).

Respectfully submitted,

<u>/s/ Eden B. Heilman</u> Eden B. Heilman (Va. Bar No. 93554) Matthew Callahan ( <i>pro hac vice</i> ) American Civil Liberties Union (ACLU) Foundation of Virginia 701 E. Franklin St., Suite 1412 Richmond, VA 23219 Tel: (804) 644-8022 Fax: (804) 649-2733 eheilman@acluva.org mcallahan@acluva.org  Eve L. Hill (VA Bar # 96799) Sharon Krevor-Weisbaum ( <i>pro hac vice</i> ) Jessica Weber ( <i>pro hac vice</i> ) Brown Goldstein Levy LLP 120 E. Baltimore Street, Suite 2500 Baltimore, MD 21202 Tel: (410) 962-1030 Fax: (410) 385-0869 EHill@browngold.com skw@browngold.com jweber@browngold.com  Steven M. Traubert (Va. Bar #41128) Rebecca S. Herbig (Va. Bar #65548)	<u>/s/ Andrew N. Ferguson</u> Jason S. Miyares Attorney General  Andrew N. Ferguson (Va. Bar #86583) Solicitor General  Charles H. Slemp III (Va. Bar #79742) Chief Deputy Attorney General  Steven G. Popps (Va. Bar #80817) Coke Morgan Stewart (Va. Bar #41933) Deputy Attorneys General  Erika L. Maley (Va. Bar #97533) Principal Deputy Solicitor General  Lucas W.E. Croslow (Va. Bar #97517) Graham K. Bryant (Va. Bar #90592) Deputy Solicitors General  Annie Chiang (Va. Bar #94703) M. Jordan Minot (Va. Bar #95321) Assistant Solicitors General  Jacqueline C. Hedblom (Va. Bar #68234) Senior Assistant Attorney General
--	---

<p>disAbility Law Center of Virginia  1512 Willow Lawn Drive, Suite 100  Richmond, Virginia 23230  (804)225-2042  steven.traubert@dLCV.org  rebecca.herb主@dLCV.org</p> <p>Ian S. Hoffman (VA Bar #75002)  John A. Freedman (<i>pro hac vice</i> to be filed)  Arnold &amp; Porter Kaye Scholer LLP  601 Massachusetts Ave., N.W.  Washington, DC 20001  Tel: (202) 942-5000  Fax: (202) 942-5999  Ian.Hoffman@arnoldporter.com_  John.Freedamn@arnoldporter.com_</p> <p>Kaitlin Banner (<i>pro hac vice</i>)  Margaret Hart (<i>pro hac vice</i>)  Marja K. Plater (<i>pro hac vice</i>)  WASHINGTON LAWYERS'  COMMITTEE FOR CIVIL RIGHTS AND  URBAN AFFAIRS 700 14th Street, NW,  Suite 400  Washington, DC 20005  Phone: (202) 319-1000  Fax: (202) 319-1010  kaitlin_banner@washlaw.org  margaret_hart@washlaw.org  marja_plater@washlaw.org</p> <p><i>Counsel for Plaintiffs</i></p>	<p>Thomas J. Sanford (Va. Bar #95965)  Calvin C. Brown (Va. Bar #93192)  <i>Assistant Attorneys General</i></p> <p>Office of the Attorney General  202 North Ninth Street  Richmond, Virginia 23219  Telephone: (804) 692-0551  Facsimile: (804) 371-2087  Email: TSanford@oag.state.va.us</p> <p><i>Counsel for Defendants</i></p>
--	---